

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALEX ANG and LYNNE STREIT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC.,

Defendant.

Case No. 13-CV-1196 (WHO) (NC)

**[PROPOSED] ORDER RE DISCOVERY
DISPUTES**

Judge: Hon. Nathanael M. Cousins

Pursuant to the Court's Order dated April 21, 2014 (Dkt. No. 72) (the "Order"), the parties to the above-referenced action submitted a Joint Statement on April 30, 2014, addressing their respective positions on three disputed discovery issues. After full consideration of the Joint Statement, the plaintiffs' discovery requests and Bimbo Bakeries USA, Inc.'s ("BBUSA") responses thereto, the Court hereby ORDERS:

1. The UCL, FAL, and CLRA do not apply to conduct and injuries that occur outside of California. *See, e.g., Wilson v. Frito-Lay N. Am., Inc.*, 961 F.Supp.2d 1134, 1147 (N.D. Cal.

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2013) (Conti, J.) (“[w]ith regard to the UCL, FAL, and CLRA, non-California residents’ claims are not supported where none of the alleged misconduct or injuries occurred in California.”) (internal quotation omitted) (dismissal with prejudice); *Koehler v. Litehouse, Inc.*, 2012 WL 6217635 at *7 (N.D. Cal. Dec. 13, 2012) (Illston, J.) (nonresidents who purchased products outside California “[did] not have the requisite contacts with California” to justify the extraterritorial application of the UCL, FAL or CLRA). Therefore, the UCL, FAL, and CLRA do not govern non-California residents’ purchases of BBUSA products outside California, and any BBUSA products that were never sold in California are irrelevant. Accordingly, BBUSA’s responses to the following discovery requests shall be limited to information and documents regarding products at issue that were sold in California during the Class Period:

- a. Interrogatory Nos. 3, 4; and
- b. Request for Production of Documents Nos. 1, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 32, 33, 34, 35, 36, 37, 38, 39, 50, 51, 53, 54, 55, 57, 64, 65, 66, 67, 68, 69

2. Each of the plaintiffs’ causes of action turns on whether certain BBUSA product labels, as they existed during the Class Period (a four-year period defined in the Second Amended Complaint), violated California Business & Professions Code § 17200 *et seq.* (the “UCL”), § 17500 *et seq.* (the “FAL”), and California Civil Code § 1750 *et seq.* (the “CLRA”). The labels themselves are the evidence that will be used to support or refute those claims. Pursuant to Rule 26(b)(2)(C) of the Federal Rules of Civil Procedure, the Court finds that evidence which pre-dates the Class Period, and which may suggest why the labels contain certain information, are of minimal relevance to the plaintiffs’ claims, and the search for such evidence would impose a substantial burden and expense on BBUSA. Accordingly, BBUSA’s responses to the following discovery requests shall be limited to information and documents from the Class Period, as defined in the Second Amended Complaint:

- a. Interrogatory Nos. 1, 2, 3, 4; and
- b. Request for Production of Documents Nos. 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13,

1 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 32, 33, 34, 35, 36, 37, 38, 39, 50, 51,
2 52, 53, 54, 55, 57, 64, 65, 66, 67, 68, 69, 72

3 3. Disgorgement of profits is not an available remedy under the UCL, FAL, and
4 CLRA. Therefore, any revenues or profits that BBUSA realized from the sales of its products at
5 the wholesale level are irrelevant. Accordingly, BBUSA is not required to respond to the
6 following discovery requests: Request for Production of Documents Nos. 26, 27, 28, 29, 73.

7 4. It is undisputed that BBUSA is not a retail seller of any of the products at issue.
8 Nevertheless, even if BBUSA possessed documents regarding the suggested retail prices of its
9 products, those documents necessarily would not reflect the actual amounts the plaintiffs paid for
10 BBUSA products, because the actual cost would vary by retail outlet and location, and could
11 further depend on whether the plaintiffs used coupons or took advantage of discounted or
12 promotional pricing offered by the various retailers. In light of those considerations, the Court
13 finds that retail pricing and sales statistics are irrelevant, and BBUSA is not required to respond to
14 the following discovery requests: Request for Production of Documents Nos. 26, 27, 30, 31, 70,
15 71, 73.

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17 **IT IS SO ORDERED.**

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19 Dated: _____, 2014

20 HON. NATHANAEL M. COUSINS
21 U.S. MAGISTRATE JUDGE
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